



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130402313-3748-02]

RIN 0648-BD15

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands;
Regulatory Amendment 2

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Regulatory
Amendment 2 to the Fishery Management Plan (FMP) for the Queen
Conch Resources of Puerto Rico and the U.S. Virgin Islands
(USVI) (Regulatory Amendment 2), as prepared by the Caribbean
Fishery Management Council (Council). This final rule revises
the commercial trip limit for queen conch in the Caribbean
exclusive economic zone (EEZ) to be compatible with the trip
limit in USVI territorial waters. The purpose of this provision
is to improve the compatibility of Federal and USVI territorial
regulations for queen conch in order to facilitate enforcement
efforts while ensuring the long-term health of the queen conch

resource. This final rule also changes the regulations specifying the queen conch fishing season to correct an inadvertent change to the text that occurred in a prior rulemaking. The revision better reflects the original and current intent of the Council.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of Regulatory Amendment 2, which includes an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review (RIR), may be obtained from the Southeast Regional Office Web site at: <http://sero.nmfs.noaa.gov/index.html>.

FOR FURTHER INFORMATION CONTACT: Maria del Mar Lopez, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail: Maria.Lopez@noaa.gov.

SUPPLEMENTARY INFORMATION: The queen conch fishery in the U.S. Caribbean is managed under the FMP for the Queen Conch Resources of Puerto Rico and the USVI (Queen Conch FMP). The Queen Conch FMP was prepared by the Council, and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On June 7, 2013, NMFS published a proposed rule for

Regulatory Amendment 2 and requested public comment (78 FR 34311). The proposed rule and Regulatory Amendment 2 outline the rationale for the actions contained in the final rule. A summary of the actions implemented by this final rule is provided below.

Management Measures Contained in this Final Rule

This final rule revises the commercial trip limit to 200 queen conch per vessel per day from the current 150 queen conch per licensed commercial fisher per day. The purpose of this provision is to improve the compatibility of Federal and USVI territorial regulations for queen conch in order to facilitate enforcement efforts while ensuring the long-term health of the queen conch resource.

Other Changes Contained in this Final Rule

This final rule also changes the language in 50 CFR 622.491 to correct an inadvertent change to the text specifying the queen conch fishing season. Fishing for queen conch is only allowed from November 1 through May 31, and only in the area east of 64°34' W. longitude which includes Lang Bank east of St. Croix, USVI. In the rest of the Caribbean EEZ, there is a prohibition on the harvest and possession of queen conch. This revision corrects a mistake that occurred in prior rule-making (Regulatory Amendment 1; 76 FR 23907, April 29, 2011), in which

the sentence was restructured, resulting in an inadvertent change in the meaning. This rule revises the codified text to its previous form. Changing the codified text to its previous form reflects the original and current intent of the Council.

Comments and Responses

NMFS received two comments on the proposed rule and Regulatory Amendment 2. A Federal agency stated it had no comments on the actions in Regulatory Amendment 2. The other comment was unrelated to the actions contained in Regulatory Amendment 2 and the proposed rule and, therefore, is not addressed here.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the conservation and management of queen conch and is consistent with Regulatory Amendment 2, the Queen Conch FMP, the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant adverse economic impact on a substantial

number of small entities. The factual basis for this determination is as follows:

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$4.0 to \$19.0 million, Shellfish Fishing from \$4.0 to \$5.0 million, and Other Marine Fishing from \$4.0 to \$7.0 million. Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 20, 2013, final rule, an initial regulatory flexibility analysis was developed for this action using SBA's former size standards. Subsequent to the June 20, 2013 rule, NMFS has reviewed the analysis prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small entities under the new standards. NMFS has determined that the new size standards do not affect the analyses prepared for this action.

This rule is expected to directly affect commercial fishermen in St. Croix, USVI, who harvest queen conch. Queen conch harvest in the EEZ of the U.S. Caribbean is restricted to the Lang Bank area off St. Croix and all queen conch harvest from this area is believed to be landed in St. Croix because of

the prohibitive travel distances that would be required to land in other locations. As a result, the assessment of the number of commercial entities expected to be affected by this rule is based on St. Croix commercial trip ticket data.

The USVI fishing year for all species is July 1 through June 30. Over the 2009/2010 through 2011/2012 fishing years, an average of 40 fishermen (range of 30-48) per fishing year recorded landings of queen conch in St. Croix. The average total revenue per fishing year from the harvest of all marine species (queen conch and all other species) by these fishermen was approximately \$2.6 million (nominal or un-inflated dollars), or approximately \$64,000 per fisherman (\$2.6 million/40). These estimates include all fishermen with recorded queen conch landings in St. Croix, regardless of where the queen conch were harvested (EEZ or territorial waters). Precise comparable estimates for fishermen who harvested queen conch in the EEZ are not available because the area of harvest was not provided on all trip tickets (area fished was not reported on trip tickets that accounted for approximately 11 percent of the average queen conch harvest per fishing year). However, an average of 17 fishermen (range of 9-23) per fishing year reported queen conch harvests from the EEZ. The average total revenue from the harvest of all marine species by these fishermen during this

period was approximately \$1.0 million (nominal or un-inflated dollars), or approximately \$60,000 per fishermen (\$1.0 million/17).

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in marine fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$5 million (NAICS code 114112, shellfish fishing), \$7 million (NAICS code 114119, other marine fishing), and \$19 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. Both average revenue estimates, approximately \$64,000 for all fishermen with commercial queen conch landings and approximately \$60,000 for fishermen who reported harvesting queen conch from the EEZ, are significantly lower than all of these SBA thresholds. As a result, all commercial fishermen expected to be affected by this rule are determined, for the purpose of this assessment, to be small business entities.

This rule increases the number of queen conch that can be harvested per vessel per day if one licensed commercial fisherman is on board the vessel, and decreases the allowable

harvest if multiple licensed commercial fishermen are on board. However, only 2 percent or fewer of the trips that harvest queen conch are believed to carry multiple licensed commercial fishermen and no licensed commercial fishermen are known to exclusively fish with other licensed commercial fishermen on board. As a result, the effects of increasing the allowable queen conch harvest per vessel per day on trips with a single licensed commercial fisherman on board is expected to account for the majority of the economic impacts of this rule.

The net direct economic effects of this rule cannot be quantified with available data. Increasing the number of queen conch that can be harvested per vessel per trip is expected to increase the average daily harvest and associated revenue per trip for trips on which queen conch are harvested. Total operating costs may be reduced if fishermen take fewer trips to harvest the queen conch annual catch limit (ACL). An increase in the revenue per trip and a decrease in operating costs results in an increase in profit to affected small entities.

The queen conch commercial ACL in St. Croix is 50,000 lb (22,680 kg) and queen conch harvest and possession in the EEZ is prohibited when the St. Croix ACL is reached. As a result, the total average annual revenue to all commercial fishermen from queen conch harvest is not expected to be affected by this rule

other than as a result of a possible reduction in average price if increased harvest rates result in a derby fishery and depress prices. However, of the estimated average 40 fishermen who harvest queen conch per year, only an estimated average of 17 fishermen per year harvest queen conch in the EEZ. Closure of the fishery due to the ACL being reached has only occurred once since the 2008/2009 fishing year and approximately two-thirds of the total queen conch harvest in St. Croix comes from territorial waters. As a result, any increased harvest rate that might occur in response to the increase in the trip limit in the EEZ may not significantly reduce the length of the open season and, thus, may have minimal to no effect on queen conch prices. Therefore, increasing the daily average harvest rate, which may occur as a result of the increase in the trip limit, may have only a small effect on increasing the likelihood of the fishery closing due to the ACL being reached and/or reducing the average price for queen conch.

In addition to the effects described in the previous paragraph, fishing for, and revenue from, other species may increase as a result of this rule if fishermen are able to take fewer trips to harvest the queen conch ACL and increase fishing effort for other species. However, any increase in revenue from other species will be an indirect effect of this rule.

This rule also changes the language in the codified text specifying the queen conch fishing season. This change corrects an inadvertent change to the text that occurred in a prior rulemaking, as discussed in the preamble. The revision better reflects the original and current intent of the Council. Queen conch fishing in the Caribbean EEZ has been consistent with the season specified by the change and, therefore, this change is not expected to result in any economic effects on any small entities.

In summary, the average fisherman expected to be directly affected by this rule is expected to experience an increase in revenue and profit. However, the amount of this increase cannot be determined with available data.

The information provided above supports a determination that this rule will have beneficial effects on affected small entities, and therefore would not have a significant adverse economic impact on a substantial number of small entities. An initial regulatory flexibility analysis (IRFA) was prepared for the proposed rule, and the resultant analysis concluded the same finding of positive economic impacts. No challenge of this determination or other substantive issue was received through public comment of the proposed rule, and thus, no changes were made in the rule. Accordingly, a final regulatory flexibility

analysis was not required or prepared. Copies of the RIR and IRFA are available (see ADDRESSES).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Queen conch, St. Croix, U.S. Virgin Islands.

Dated: September 9, 2013

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.491, paragraph (a) is revised to read as follows:

§ 622.491 Season and area closures.

(a) No person may fish for or possess on board a fishing vessel a Caribbean queen conch in or from the Caribbean EEZ, except from November 1 through May 31 in the area east of 64°34' W. longitude which includes Lang Bank east of St. Croix, U.S. Virgin Islands.

* * * * *

3. In § 622.495, paragraph (a) is revised and paragraph (b) is added to read as follows:

§ 622.495 Commercial trip limit.

* * * * *

(a) Applicability. The trip limit of paragraph (b) of this section applies to a vessel that has at least one person on board with a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands. If no person on board the vessel has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands, the bag limit specified in § 622.494(b) applies.

(b) Trip limit. The trip limit for queen conch in or from the Caribbean EEZ is 200 queen conch per day.

[FR Doc. 2013-22212 Filed 09/11/2013 at 8:45 am; Publication
Date: 09/12/2013]